

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference		FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/EP2004/013225		International filing date (day/month/year) 19.11.2004	Priority date (day/month/year) 04.12.2003	
International Patent Classification (IPC) or national classification and IPC A61K7/00				
Applicant UNILEVER PLC et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau a total of 1 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 21.06.2005		Date of completion of this report 01.03.2006		
Name and mailing address of the international preliminary examining authority:  European Patent Office - Gitschiner Str. 103 D-10958 Berlin Tel. +49 30 25901 - 0 Fax: +49 30 25901 - 840		Authorized Officer Alvarez Alvarez, C Telephone No. +49 30 25901-343		



**INTERNATIONAL PRELIMINARY REPORT
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International application No.
PCT/EP2004/013225

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-14 as originally filed

Claims, Numbers

8-12 as originally filed
1-7 received on 23.06.2005 with letter of 22.06.2005

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing *(specify)*:
- ☐ any table(s) related to sequence listing *(specify)*:

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing *(specify)*:
- ☐ any table(s) related to sequence listing *(specify)*:

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-12
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-12
Industrial applicability (IA)	Yes: Claims	1-12
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

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Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

Reference is made to the following document/s/:

D1: WO 03/097003 A

D2: WO 02/19973 A

1. Novelty

D1 does not disclose cosmetic compositions containing at least 2 wt% of fatty acid neutralized by an inorganic base.

D2 disclose oil in water emulsions where the content in water exceeds 10 wt%.

Therefore the subject-matter of amended set of claims 1-12 is considered to be new.

2. Inventive activity

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-12 does not involve an inventive step in the sense of Article 33(3) PCT.

2.1 Claim 1

The document D1 is regarded as being the closest prior art to the subject-matter of claim 1 and discloses base compositions containing (i) less than 10 wt% water, (ii) non neutralised stearic acid, (iii) glycol stearate and glycerol stearate and (iv) neutralised stearic acid in amounts bigger than 2 wt% (see D1, examples 1-4). D1 describes these compositions as being smooth, homogeneous concentrate skin compositions to be used directly on the skin or as base in the preparation *in situ* of

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customized cosmetic products (see D1, page 3, line 19 - page 4, line 14). This use coincides with the utilisation mentioned in the present application for the claimed compositions (see application, page 1, lines 3-4; page 3, lines 10-11; page 11, lines 6-8; page 12, lines 20).

The difference between the subject-matter of claim 1 and the disclosure of D1 lies on the fact that the compositions of claim 1 contain at least 2 wt% of fatty acid neutralized by an inorganic base.

The applicant has not shown any advantage of the claimed compositions over the compositions disclosed in the prior art D1.

Therefore, the problem to be solved has to be stated as the provision of further concentrated cosmetic compositions to be used as base for customized preparations and containing (i) less than 10 wt% water, (ii) fatty acid, (iii) glycerine monostearate or glycol monostearate or both and (iv) at least 2 wt% of neutralized fatty acid.

The proposed solution is that the fatty acid (iv) should be neutralized by inorganic bases.

D2 discloses cosmetic base emulsion compositions comprising 1-5 wt% of neutralised C₁₄₋₃₂ fatty acids and glyceryl monostearate and/or glycol stearate, where the neutralising base is selected from NaOH and KOH (see D2, claims 1, 2 and 4; examples 1-7; page 4, paragraph 5).

Therefore, the skilled person, who starts from D1 and aims at solving the problem as stated above, receives from D2 the indication that it is also possible to prepare cosmetic compositions to be used as base for other cosmetic preparations and which contain C₁₄₋₃₂ fatty acid, partially neutralized with sodium hydroxide or potassium hydroxide, together with the structuring ingredients glycerine monostearate or glycol monostearate (see D2, claims 1, 2 and 4; examples 1-7; page 4, paragraph 5).

Consequently, The subject-matter of claim 1 is considered devoid of inventive activity.

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The additional technical features of dependent claims 2-8 are disclosed also by D1 (see relevant passages cited in the search report). Therefore the subject-matter of claims 2-8 is considered in each case as obvious alternative modification and is thus considered as non inventive.

2.2 Independent claims 9 and 10

D1 is considered as the closest prior art for the subject-matter of claims 9 and 10. Claims 9 deals with methods for preparing the compositions claimed in claim 1. Claim 10 deals with a process for hydrating the compositions claimed in claim 1.

The composition claimed in claim 1 is itself non inventive (see item 2.1 above).

D1 discloses methods for obtaining the compositions and for hydrating the compositions which coincide with the methods claimed in claims 9 and 10. These compositions are obtained in the first step of the method disclosed (step a) as mentioned in D1, claim 1.

A process for hydrating the composition is also disclosed in step b) water is added to the powder mixture at room temperature to prepare a cosmetic skin cream.

The relevant passages of D1 are to be found in claims 1, 2, 3, 5, 15, 18; examples 3 and 4; page 4, line 29 - page 5, line 19 and page 8, lines 13-20.

The difference between the subject-matter of claims 9 and 10 and the disclosure of D1 is the use of an inorganic base as neutralising agent for the fatty acid.

This difference has been found not inventive (see item 2.1 above).

Consequently, the subject-matter of independent claim 9 and 10 is devoid of inventive activity.

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Dependent claims 11 and 12 do not contain any features which, in combination with the features of claim 10, meet the requirements of the PCT in respect of inventive step, see document D1 and the corresponding passages cited in the search report. The reason is that diluting with water at temperature from 0 to 35°C without mentioning any surprising effect of such temperature selection has to be seen as a routine process. Same reasoning applies to the proportion solute/solvent 1:3 to 1:20.

EPO - DG 1

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23.06.2005

CLAIMS

(96)

1. A cosmetic composition comprising:
 - (i) less than 10 wt% water,
 - (ii) fatty acid,
 - (iii) a structuring agent selected from the group comprising glycerine monostearate and glycol monostearate or a combination thereof, and
 - (iv) at least 2 wt% ~~neutralised~~ fatty acid. *neutralised by an inorganic base.*
2. Cosmetic composition according to claim 1, wherein the amount of neutralised fatty acid is from 2 to 15 wt%.
3. Cosmetic composition according to claim 1 or 2, wherein the structuring agent is glycerine monostearate.
4. Cosmetic composition according to any one of claims 1-3, wherein the amount of fatty acid is from 5 to 90 wt% based on the total amount of fatty acid and structuring agent.
5. Cosmetic composition according to any one of claims 1-4, wherein the hydrocarbon chain length of the fatty acid is from 14 to 20, preferably from 16 to 18 carbon atoms.
6. Cosmetic composition according to any one of claims 1-5, wherein the amount of structuring agent is from 15 to 75 wt% on total weight of the composition.
7. Cosmetic composition according to any one of claims 1-6, wherein the total amount of fatty acid is from 5 to 80 wt% on total weight of the composition.